

Montana Water Court  
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MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: MS Hooks Farms LLC

**CASE 43B-0747-R-2022**

43B 33969-00

43B 36426-00

**ORDER GRANTING MOTION TO AMEND and ORDER ADOPTING MASTER'S REPORT**

Pursuant to Montana Code Annotated, § 85-2-233(5), the above entitled case was assigned to Senior Water Master Kathryn L. W. Lambert. The Senior Water Master filed a report containing Findings of Fact and Conclusion of Law with the Clerk of Court. Copies of the report were served upon the claimant on April 5, 2023. On April 17, 2023 MS Hooks Farms LLC filed a Notice Of Error In Master's Report. The "error" in the Master's Report is actually a request to amend the place of use of claim 43B 36426-00 which was not at issue in the proceedings. This is a motion to amend pursuant to section 85-2-233(6), MCA.

APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of an amendment to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendment “may adversely affect other water rights.” Section 85-2-233(6)(a)(i), MCA.

#### FINDINGS OF FACT

1. The change to claim 43B 36426-00 requested in the motion to amend arises out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, is based on the same operative facts specified in the Statement of Claim, and merely makes more specific that which was already claimed on the original Statement of Claim.

2. The Preliminary Decree states that the place of use legal description is the SWSESE section 11, T1S, R13E, SWEET GRASS. This is a livestock direct from source claim. The place of use legal description should be the same as the point of diversion legal description. The place of use legal description is amended to the SESWSE section 11, T1S, R13E, SWEET GRASS.

#### CONCLUSIONS OF LAW

1. The requested amendment does not adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The motion to amend is sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree.

Therefore, it is

ORDERED that the motion to amend the place of use for claim 43B 36426-00 is GRANTED.

Pursuant to Rule 53(e), M.R.Civ.P., it is

ORDERED that the Court **ADOPTS** the Senior Water Master’s Report and its Recommendations and **APPROVES** the changes to the centralized computer record system that are reflected on the abstract for claim 43B 33969-00 attached to the Master’s Report and reflected on the abstract for claim 43B 36426 served with these Orders.

**ELECTRONICALLY SIGNED AND DATED BELOW**

Service Via Electronic Mail:

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 36426-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MS HOOKS FARMS LLC  
76 GLASSTON RD  
BIG TIMBER, MT 59011

**Priority Date:** FEBRUARY 19, 1951

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	11	1S	13E	SWEET GRASS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWSE	11	1S	13E	SWEET GRASS